



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPP

MICHAEL J. SULLIVAN
DIRECTOR

December 20, 1996
AO-96-32

Paul Alan Rufo, Esq.
Kutchin & Rufo
One Liberty Square
Boston, MA 02109-4825

Re: Donation to Suffolk University

Dear Mr. Rufo:

This letter is in response to your December 2, 1996 request for an advisory opinion.

Question

You have asked if The Bob Rufo Committee may, consistent with the residual funds clause of M.G.L. c. 55, s. 18, donate a portion of the committee's residual funds to Suffolk University to be used in connection with the University's current capital campaign to raise funds for the construction of a new law school building.

Answer

Yes. Given the facts stated in your letter, the donation would be consistent with the residual funds clause and would not be primarily for the candidate's or any other person's personal use.

Facts

You have stated that the committee was established in 1986 in connection with Robert C. Rufo's candidacy for the office of Sheriff of Suffolk County. On August 21, 1996, the candidate resigned from the office of Sheriff, having been appointed Associate Justice of the District Court of Massachusetts.

Marc G. Perlin (Perlin), chairman of the Rufo committee, is a professor of law at Suffolk University. The candidate has been employed as an adjunct professor of law, offering a course in the evening division of the law school, once a year since 1984. The candidate is scheduled to teach in the spring, 1997 semester. Suffolk University employs over two hundred fifty full-time faculty, with sixty employed in the law school. The University also employs over two hundred and sixty adjunct faculty, with ninety employed in the law school.

Suffolk University is a not-for-profit educational institution incorporated by the Massachusetts legislature which we assume is subject to M.G.L. c. 12, s. 8. The University is governed by a Board of Trustees consisting of 37 members; its officers include a Chairman, Vice Chairman, President, one or more Vice Presidents, a Treasurer, and a Clerk. Although employed by the University, the candidate and Perlin are not members of the Board of Trustees, are not officers of the University, and are not related to any University trustees or officers.

Discussion

The campaign finance law states that political committees may spend campaign funds "so long as such expenditure is not primarily for the candidate's or any other person's personal use." See M.G.L. c. 55, s. 6. In addition, the "residual funds clause" in the fifteenth paragraph of section 18 of chapter 55 specifically relates to the disposition of funds upon the dissolution of a political committee. The clause specifies who may receive residual funds remaining in a campaign account at dissolution. In particular, the clause prohibits distribution of such funds to institutions which are controlled by candidates, committee officers, or their families.

As this office recently noted, "the intent of the residual funds clause's restriction on distributing residual funds to entities which are controlled by or which benefit family members of candidates or committee officers [or candidates] is to avoid such personal use of campaign funds." See AO-95-02.

To answer your question, we need to determine whether the candidate and Perlin, as either adjunct or full-time faculty members, should be considered "trustees, officers, principals or beneficiaries" of the university, as those terms are used within the context of the residual funds clause. We also need to consider whether either person would personally benefit from the donation, contrary M.G.L. c. 55, s. 6.

1. Faculty members may not be "trustees, officers, principals or beneficiaries" of a university.

The residual funds clause provides that when a candidate or political committee closes its account, it must donate funds remaining in the account to (1) the Local Aid Fund established under the provisions of M.G.L. c. 29, s. 2D; (2) a religious or charitable organization which is subject to M.G.L. c. 67 or M.G.L. c. 12, s. 8; (3) a scholarship fund; or (4) the general fund of any city or town in the commonwealth.

The clause states that payment of residual funds to a charitable organization may only be made if:

. . . the candidate, treasurer or any official of the political committee shall not be related by consanguinity or affinity to any trustee, officer,

principal or beneficiary of said entity either at the time of the gift or within ten years from the date of such gift; provided, further, that no entity may employ as a trustee, officer, principal or beneficiary any person related by consanguinity or affinity to the candidate, treasurer or any official of the political committee either at the time of the gift or within ten years from the date of such gift . . . [emphasis added].

The statute does not say that candidates or officers of a committee may not be employees of a recipient institution, and whether an employee is also a "trustee, officer, principal or beneficiary" of an institution depends on the definition of these terms. Since the statute does not provide definitions, it is appropriate to turn to definitions found in Webster's New Collegiate Dictionary:

A "trustee" is "one to whom something is entrusted," or a person "to whom property is legally committed to be administered for the benefit of a beneficiary."

An "officer" is "one who holds an office of trust, authority, or command."

A "principal" is "a person who has controlling authority or is in a leading position."

A "beneficiary" is "one that benefits from something" or "the person designated to receive the income of a trust estate."

In contrast, an "employee" is "one employed by another usually for wages and in a position below the executive level."

A university professor or adjunct professor generally would not fall within the definitions of trustee, officer, principal or beneficiary. Based on the facts in your letter, the candidate and Perlin do not appear to be within the prohibited category of persons named in the residual funds clause.

2. The donation does not appear to result in personal use of campaign funds by the candidate, Perlin, or any other person.

Underlying the statutory prohibitions contained in the residual funds clause are the goals of preventing distribution of campaign funds to recipients who are controlled by candidates and campaign committee officers (or their relatives), and of preventing distribution where the recipient may use the funds to benefit such persons. In AO-95-02, we concluded that residual funds could be transferred to a trust even if the deceased candidate's son was an honorary board member of the trust. In reaching that conclusion, the office stated that given the nature of the trust, "honorary board members" did not control disposition of the funds transferred to the trust. In addition, honorary board members did not personally benefit from the transfer. Therefore, the transfer

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did not involve personal use of campaign funds, which would have been prohibited by section 6.

Similarly, the candidate and Perlin, as full-time or adjunct faculty members, apparently will not personally benefit from the transfer. You have not suggested that the candidate or Perlin would obtain a bonus or otherwise receive a personal benefit from the transfer. In addition, I note that the transfer would be to a capital/building program, not to the general treasury. Therefore, the funds will not be used to enhance the candidate's or Perlin's salaries.

Conclusion

For the reasons stated above, The Rufo Committee may transfer a portion of the funds remaining in its account to Suffolk University.

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,



Michael J. Sullivan
Director

MJS/cp